

Notice of Allowability

Application No.

09/713,601

Examiner

Young J. Kim

Applicant(s)

AGARWAL ET AL.

Art Unit

1637

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to 5/17/04.
2. ☒ The allowed claim(s) is/are 1-3 and 5-11.
3. ☐ The drawings filed on _____ are accepted by the Examiner.
4. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) ☐ All b) ☐ Some* c) ☐ None of the:
 1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

* Certified copies not received: _____.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.
THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.

5. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
 6. ☒ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
 - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
 - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date _____.
 - (b) ☒ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date _____.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
7. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

1. ☐ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3. ☒ Information Disclosure Statements (PTO-1449 or PTO/SB/08),
Paper No./Mail Date 5/17/04
4. ☐ Examiner's Comment Regarding Requirement for Deposit
of Biological Material
5. ☐ Notice of Informal Patent Application (PTO-152)
6. ☐ Interview Summary (PTO-413),
Paper No./Mail Date _____.
7. ☒ Examiner's Amendment/Comment
8. ☐ Examiner's Statement of Reasons for Allowance
9. ☐ Other _____.

DETAILED ACTION

In view of the papers filed May 17, 2004, it has been found that this nonprovisional application, as filed, through error and without deceptive intent, improperly set forth the inventorship, and accordingly, this application has been corrected in compliance with 37 CFR 1.48(a). The inventorship of this application has been changed by the addition of Victor Lyamichev, Jeff Hall, James R. Prudent, and Mary Ann Brow.

The application will be forwarded to the Office of Initial Patent Examination (OIPE) for issuance of a corrected filing receipt, and correction of the file jacket and PTO PALM data to reflect the inventorship as corrected.

Drawings

New corrected drawings are required in this application because drawings submitted on February 24, 2003 contain crossed-out Figure heading (Fig. 4) and hand-written elements which are hard to read (for example, Figure 75). Applicant is advised to employ the services of a competent patent draftsman outside the Office, as the U.S. Patent and Trademark Office no longer prepares new drawings. The corrected drawings are required in reply to the Office action to avoid abandonment of the application. The requirement for corrected drawings will not be held in abeyance.

Information Disclosure Statement

The IDS received on May 7, 2004 is noted. However, no references cited therein were received by the Office. If Applicants believe that this determination is in error, Applicants are requested to submit evidence to the contrary (such as stamped postcard acknowledging the

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receipt of the references). As all of the references cited in said IDS were non-patent literatures, said references were not considered.

Double Patenting

The provisional rejection of claims 7-11 under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 92 and 99-101 of copending Application No. 09/381,212 (IDS ref # 27), made in the Office Action mailed on December 3, 2003 is withdrawn in view of the Terminal Disclaimer filed in the Amendment received on May 17, 2004.

The provisional rejection of claims 1-3 and 5 under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1, 2, 5, 6, and 7 of copending Application No. 10/290,386, made in the Office Action mailed on December 3, 2003 is withdrawn in view of the Terminal Disclaimer filed in the Amendment received on May 17, 2004.

The rejection of claims 1-3 and 5 under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 16 of U.S. Patent No. 6,090,543 (IDS ref # 12), made in the Office Action mailed on December 3, 2003 is withdrawn in view of the Terminal Disclaimer filed in the Amendment received on May 17, 2004.

The rejection of claims 1-3, and 5 under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 1 of U.S. Patent No. 5,846,717 (IDS ref # 17), made in the Office Action mailed on December 3, 2003 is withdrawn in view of the Terminal Disclaimer filed in the Amendment received on May 17, 2004.

The rejection of claims 1-3 and 5 under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 1 of U.S. Patent No. 6,348,314 (IDS ref # 9), made in the Office Action mailed on December 3, 2003 is withdrawn in view of the Terminal Disclaimer filed in the Amendment received on May 17, 2004.

The provisional rejection of claim 6 under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1 and 6 of copending Application No. 10/290,386 in view of Caskey et al (U.S. Patent No. 5,578,458, issued November 26, 1996), made in the Office Action mailed on December 3, 2003 is withdrawn in view of the Terminal Disclaimer filed in the Amendment received on May 17, 2004.

The rejection of claim 6 under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 16 of U.S. Patent No. 6,090,543 (IDS ref # 12) in view of Caskey et al (U.S. Patent No. 5,578,458, issued November 26, 1996), made in the Office Action mailed on December 3, 2003 is withdrawn in view of the Terminal Disclaimer filed in the Amendment received on May 17, 2004.

The rejection of claim 6 is rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 1 of U.S. Patent No. 5,846,717 (IDS ref # 17) in view of Caskey et al (U.S. Patent No. 5,578,458, issued November 26, 1996), made in the Office Action mailed on December 3, 2003 is withdrawn in view of the Terminal Disclaimer filed in the Amendment received on May 17, 2004.

The rejection of claim 6 under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 1 of U.S. Patent No. 6,348,314 (IDS ref # 9) in view of Caskey et al (U.S. Patent No. 5,578,458, issued November 26, 1996), made in the Office

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Action mailed on December 3, 2003 is withdrawn in view of the Terminal Disclaimer filed in the Amendment received on May 17, 2004.

Inquiries

Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Young J. Kim whose telephone number is (571) 272-0785. The Examiner can normally be reached from 8:30 a.m. to 6:00 p.m. Monday through Thursday. If attempts to reach the Examiner by telephone are unsuccessful, the Primary Examiner in charge of the prosecution, Dr. Kenneth Horlick, can be reached at (571) 272-0784. If the attempts to reach the above Examiners are unsuccessful, the Examiner's supervisor, Gary Benzion, can be reached at (571) 272-0782. Papers related to this application may be submitted to Art Unit 1637 by facsimile transmission. The faxing of such papers must conform with the notice published in the Official Gazette, 1156 OG 61 (November 16, 1993) and 1157 OG 94 (December 28, 1993) (see 37 CFR 1.6(d)). NOTE: If applicant does submit a paper by FAX, the original copy should be retained by applicant or applicant's representative. NO DUPLICATE COPIES SHOULD BE SUBMITTED, so as to avoid the processing of duplicate papers in the Office. All official documents must be sent to the Official Tech Center Fax number: (703) 872-9306. For Unofficial documents, faxes can be sent directly to the Examiner at (517) 273-0785. Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (571) 272-0507.

YOUNG J. KIM
PATENT EXAMINER

Young J. Kim
Patent Examiner
Art Unit 1637
7/22/04

yjk


KENNETH R. HORLICK, PH.D.
PRIMARY EXAMINER

7/26/04